



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 17, 2016

James C. Romo  
Atkinso, Andelson, Loya, Ruud & Romo  
12800 Center Court Drive South, Suite 300  
Cerritos, CA 90703-9364

Re: Your Request for Advice  
**Our File No. A-16-031**

Dear Mr. Romo:

This letter responds to your request for advice on behalf of the Santa Ana Unified School District and District Governing Board Members John Palacio and Valerie Amezcua regarding the gift limit provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Are educational field inspection trips provided by the Metropolitan Water District ("MWD") to Santa Ana Unified School District (SAUSD) Board Members Palacio and Amezcua exempt from the gift limits of the Act under Section 89506?
2. If Section 89506(a)(2) is applicable and exempts the gifts from the gift limits, will the SAUSD Board Members still need to report the trip as a gift on their Form 700 and will the recipient Board Members be disqualified from participating in SAUSD decisions involving the MWD for 12 months following receipt of the gift?
3. Alternately, does Regulation 18950 apply to the payment for travel?

### CONCLUSIONS

1. Since MWD is a public agency and the travel is reasonably related to a governmental purpose and to an issue of state public policy, the exception in Section 89506 would apply.
2. While not subject to limits, the payments will be reportable by the SAUSD Board Members and could form the basis for a conflict of interest where a governmental decision before SAUSD will have a material financial effect on MWD.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

3. Since the travel is not directly connected to the SAUSD Board Member's performance of their jobs at the destination, the exception in Regulation 18950 would not apply.

### **FACTS**

A director of the MWD has extended an invitation to the SAUSD Board Members to attend an educational field inspection trip of MWD water facilities, specifically the Colorado River Aqueduct and Hoover Dam. Transportation, lodging, and food will be provided by MWD. You believe the cost of the trip may exceed \$460. The trip in question is scheduled to occur in early March 2016.

SAUSD is one of the largest school districts in California with over 50,000 students. You noted that in light of the SAUSD's educational role and given the current drought conditions prevailing throughout the State, there is significant value in educating elected members of the SAUSD's policy making governing body with respect to California's water needs, drought conditions and corresponding water conservation measures. You stated that educating SAUSD Board Members on these topics will assist those members, and thus the District's Governing Board, in establishing water use practices (including conservation measures) applicable to school campuses and other SAUSD facilities and may additionally promote water conservation through curriculum development for SAUSD students and the greater school community.

### **ANALYSIS**

#### *Gifts, Generally*

A gift is defined under Section 82028(a) as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$460 from a single source in a calendar year. (Section 89503.)
- Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. (Sections 87200 - 87210.)
- Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e).)

Under the Act, generally any travel is presumed to confer some personal benefit on a public official. Consequently, travel costs paid for by a third party generally are reportable gifts and absent an exception, the value of the travel-related expenses paid by MWD will be considered reportable gifts. (Section 82028.)

*Section 89506*

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's gift limit. In this regard, Section 89506(a) provides in pertinent part:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

\* \* \*

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

MWD is a public agency. According to your facts, there is significant value in educating elected members of the SAUSD's policy making governing body with respect to California's water needs, drought conditions and corresponding water conservation measures. Educating SAUSD Board Members on these topics will assist those members, and thus the SAUSD's Governing Board, in establishing water use practices (including conservation measures) applicable to school campuses and other SAUSD facilities and may additionally promote water conservation through curriculum development for SAUSD students and the greater school community. Under these facts, the travel would be reasonably related to a governmental purpose and to an issue of state public policy and the exception would apply.

Please note:

1. While not subject to limits, the payments will be reportable by the SAUSD Board Members and could form the basis for a conflict of interest where a governmental decision before SAUSD will have a material financial effect on MWD.

2. Payments made for items other than travel related to the educational field inspection trip of MWD water facilities and related lodging and subsistence will be considered reportable gifts subject to the \$460 gift limit.

*Regulation 18950*

Regulation 18950(c) provides:

“(c) Exceptions: In addition to the exceptions to the definition of gift set forth in Regulations 18940 through 18946.6, the following gift exceptions apply to travel payments:

“(1) ...

“(2) Any payment for travel received from a state, local, or federal government agency and related per diem expenses for education, training, or other inter-agency programs or purposes, is not a gift or income to the official who uses the payment.”

Regulation 18950(c)(2) has not been applied frequently. According to *Arens* Advice Letter, No. I-14-125:

“Regulation 18950(c)(2), on the other hand, was intended to carve out a more limited exception by which a payment would not be considered a gift or income under limited circumstances. In essence, that exception recognizes that in some circumstances money is exchanged between agencies so that an official may perform his or her job. These transactions were never intended to be reportable or potentially disqualifying gifts or income to the official because the payments were used to conduct agency business and not to provide a personal benefit to the official.”

While the trip in question will be educational for the attendees and related to policy issues they deal with, the SAUSD Board Members are not attending the tour as part of performing their job. Therefore, the exception in Regulation 18950 would not apply.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: John W. Wallace  
Assistant General Counsel,  
Legal Division

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